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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR part 457

[Docket No. FCIC-15-0001]

RIN 0563-AC47

Common Crop Insurance Regulations; Cotton Crop Insurance Provisions, Extra Long Staple Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Cotton Crop Insurance Provisions and Extra Long Staple (ELS) Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes and to clarify existing policy provisions to better meet the needs of policyholders. As discussed further within this rule, FCIC received requests to simplify program administration consistent with evolving farming practices in cotton crop production. The changes will be effective for the 2017 and succeeding crop years.

DATES: This final rule is effective [insert date of publication in the Federal Register]. However, FCIC will accept written comments on this final rule until close of business [insert date 60 days after publication in the Federal Register]. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers interested persons submit their comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments,

identified by Docket ID No. FCIC-15-0001, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

FCIC will post all comments received, including those received by mail, without change to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an entity, such as an association, business, labor union, etc.).

Interested persons may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and

tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States.

The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes

FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the

human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 Cotton Crop Insurance Provisions and 7 CFR 457.105 Extra Long Staple Cotton Crop Insurance Provisions to be effective for the 2017 and succeeding crop years. FCIC received requests to simplify program administration consistent with evolving farming practices in cotton crop production.

FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). However, FCIC is providing a 60-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

1. The changes to 7 CFR 457.104 Cotton Crop Insurance Provisions are as follows:

(a) Section 9 (“Duties in the Event of Damage or Loss”) - FCIC is revising paragraph (a). The provisions require, in the event of damage or loss, the insured must leave cotton stalks intact for the insurance provider’s inspection. FCIC has received requests to remove these provisions. The primary reasons provided to FCIC for removing the provisions include the following reasons:

- University extension in some regions recommends destroying the stalks as soon as possible after harvest to mitigate the possibility of insect infestation (specifically boll weevil);
- The provision requires cotton to be treated differently than other row crops, which do not require the insured to leave stalks intact for inspection;
- The provision was originally written to address multiple harvests on the same acreage, but today producers manage their cotton crops to result in harvest occurring once a year. Years ago, producers planted more late-maturing varieties and the bolls would open at different times during the harvest season causing a producer to pick the same acreage twice.
- Cotton farming practices have changed in some regions over the years and producers have grown accustomed to mowing the stalks immediately following the cotton picker; and
- Producers mow or shred cotton stalks so they can plant their winter grazing or cover crops. Since cotton stalks are woody, the sooner they can mow or shred the stalks, the sooner the stalks will begin to break down. When a cotton stalk inspection is required, a producer may have to wait up to two weeks before the field can be mowed. Depending on weather and individual circumstances, the stalk inspection is an inconvenience to producers and may interfere with timely completion of their normal operations and preparation for the winter/cover crop.

FCIC recognizes the potential existence of these issues, but also recognizes there may be situations in which a cotton stalk inspection has merit or necessity. Therefore, FCIC is

revising the provision to allow insurance companies discretion to require, in certain circumstances, that insureds leave the cotton stalks intact for company inspection. FCIC is also revising the provision to allow FCIC to include specific circumstances in the Special Provisions for which FCIC will require insureds to leave cotton stalks intact, and FCIC will require the company to conduct a cotton stalk inspection, making discretion inapplicable when any Special Provisions circumstance required by FCIC occurs.

(b) Section 10 (“Settlement of Claim”) – FCIC is revising paragraph (c)(1)(i)(E). The current provision states production to count will include, among other things, all appraised production for acreage on which cotton stalks were destroyed in violation of section 9. As discussed above, FCIC is revising section 9, which is applicable only if the AIP exercises its discretion under appropriate circumstances to require that insureds leave cotton stalks intact. FCIC is revising paragraph (c)(1)(i)(E) to state this provision applies only if section 9(a) applies.

2. The changes to 7 CFR 457.105 Extra Long Staple Cotton Crop Insurance Provisions are as follows:

(a) Section 6 (“Insurable Acreage”) – FCIC is revising paragraph (b) to correct a prior Federal Register official publication error that inadvertently resulted in missing language from this provision. The words “. . . normally further care for the crop, must . . .” were not properly published within paragraph (b). This provision was intended to match the Cotton Crop Insurance Provisions language found at 7 CFR 457.104, section 6(b).

(b) Section 9 (“Duties in the Event of Damage or Loss”) - FCIC is revising paragraph (a)(2). The provisions require, in the event of damage or loss, the insured must leave cotton stalks intact for the insurance provider’s inspection. FCIC has received requests to

remove these provisions. The primary reasons provided to FCIC for removing the provisions include the following reasons:

- University extension in some regions recommends destroying the stalks as soon as possible after harvest to mitigate the possibility of insect infestation (specifically boll weevil);
- The provision requires cotton to be treated differently than other row crops, which do not require the insured to leave stalks intact for inspection;
- The provision was originally written to address multiple harvests on the same acreage, but today producers manage their cotton crops to result in harvest occurring once a year. Years ago, producers planted more late-maturing varieties and the bolls would open at different times during the harvest season causing a producer to pick the same acreage twice.
- Cotton farming practices have changed in some regions over the years and producers have grown accustomed to mowing the stalks immediately following the cotton picker; and
- Producers mow or shred cotton stalks so they can plant their winter grazing or cover crops. Since cotton stalks are woody, the sooner they can mow or shred the stalks, the sooner the stalks will begin to break down. When a cotton stalk inspection is required, a producer may have to wait up to two weeks before the field can be mowed. Depending on weather and individual circumstances, the stalk inspection is an inconvenience to producers and may interfere with timely completion of their normal operations and preparation for the winter/cover crop.

FCIC recognizes the potential existence of these issues, but also recognizes there may be situations in which a cotton stalk inspection has merit or necessity. Therefore, FCIC is revising the provision to allow insurance companies discretion to require, in certain circumstances, that insureds leave the cotton stalks intact for company inspection. FCIC is also revising the provision to allow FCIC to include specific circumstances in the Special Provisions for which FCIC will require insureds to leave cotton stalks intact, and FCIC will require the company to conduct a cotton stalk inspection, making discretion inapplicable when any Special Provisions circumstance required by FCIC occurs.

(c) Section 10 (“Settlement of Claim”) – FCIC is revising paragraph (c)(1)(i)(E). The current provision says the production to count will include, among other things, all appraised production for acreage on which cotton stalks were destroyed in violation of section 9. As discussed above, FCIC is revising section 9, which is applicable only if the AIP exercises its discretion under appropriate circumstances to require that insureds leave cotton stalks intact. FCIC is revising paragraph (c)(1)(i)(E) to state this provision applies only if section 9(a)(2) applies.

(e) Section 12 (“Prevented Planting”) – FCIC is removing the reference to limited level of coverage in section 12(b) because it is no longer applicable.

List of Subjects in 7 CFR Part 457

Crop insurance, Cotton, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2017 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

2. Amend §457.104 as follows:

a. In the introductory text, by removing “2011” and adding “2017” in its place; and

b. By revising sections 9(a) and 10(c)(1)(i)(E).

The revisions read as follows:

§457.104 Cotton crop insurance provisions.

* * * * *

9. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss, at our option or if required by FCIC in the Special Provisions, you may be required to leave the cotton stalks intact for our inspection. If applicable, the stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

* * * * *

10. Settlement of Claim

* * * * *

(c) * * * * *

(1) * * * * *

(i) * * * * *

(E) If applicable, on which the cotton stalks are destroyed, in violation of section 9.

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3. Amend §457.105 as follows:

a. In the introductory text, by removing “2014” and adding “2017” in its place;

b. By revising sections 6(b), 9(a)(2), 10(c)(1)(i)(E), and the last sentence in section 12(b).

The revisions read as follows:

§457.105 Extra Long Staple Cotton crop insurance provisions.

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6. Insurable Acreage

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(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

* * * * *

9. Duties in the Event of Damage or Loss

(a) * * *

(2) At our option or if required by FCIC in the Special Provisions, you may be required to leave the cotton stalks intact for our inspection. If applicable, the stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss is given to us.

* * * * *

10. Settlement of Claim

* * * * *

(c) * * *

(1) * * *

(i) * * *

(E) If applicable, on which the cotton stalks are destroyed, in violation of section 9.

* * * * *

12. Prevented Planting

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(b) * * * If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on December 17, 2015.

Brandon Willis,
Manager,
Federal Crop Insurance Corporation.
[FR Doc. 2015-32308 Filed: 12/28/2015 8:45 am; Publication Date: 12/29/2015]